

AKIN GUMP STRAUSS HAUER & FELD LLP

GREGORY W. KNOPP (SBN 237615)

MARK R. CURIEL (SBN 222749)

JONATHAN P. SLOWIK (SBN 287635)

gknopp@akingump.com

mcuriel@akingump.com

jpslowik@akingump.com

2029 Century Park East, Suite 2400

Los Angeles, CA 90067

Telephone: 310-229-1000

Facsimile: 310-229-1001

Attorneys for Defendant Starbucks Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOUGLAS TROESTER, on behalf of
himself, and all others similarly
situated,

Plaintiffs,

v.

STARBUCKS CORPORATION, a
Washington corporation; and DOES 1-
50, inclusive,

Defendants.

Case No. 2:12-cv-07677-GAF-PJW

**DEFENDANT STARBUCKS
CORPORATION'S REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION**

[Reply Separate Statement,
Evidentiary Objections, Responses to
Plaintiff's Evidentiary Objections, and
Supplemental Declaration of Jonathan
P. Slowik filed concurrently]

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1 **I. INTRODUCTION**

2 Douglas Troester's opposition makes clear that his claims are much narrower in
3 scope than they originally appeared. Specifically, they are based entirely on his
4 contention that Starbucks failed to pay for the brief moments—one minute on average—
5 that he spent running a computer program (the "store close procedure") on closing shifts
6 just before setting the alarm and exiting the store.

7 While Troester identified other allegedly unpaid "work" at deposition, he
8 effectively abandoned his claims based on any other tasks. Starbucks proved that these
9 other tasks are not compensable because Troester performed them on his own time and
10 of his own volition (e.g., staying outside the store while a co-worker awaited a ride
11 home), because Starbucks had no knowledge of them (e.g., opening the store so co-
12 workers could retrieve coats and never seeking payment for this time), or because they
13 were *de minimis* (e.g., walking out of the store, locking the door, and spending roughly
14 35 seconds accompanying a co-worker to his car). Troester offered no response to any
15 of these arguments and, therefore, concedes them.

16 Moreover, while Troester continues to press his claim based on the time spent
17 performing the store close procedure, this theory, too, is narrower than he originally
18 claimed. Thus, he now limits it to the period "[f]rom Summer 2009 until October
19 2010," when his store's "computer system required that Troester clock out before
20 initiating the close store procedure." Opp. at 2. Troester concedes that his store adopted
21 a new computer system in October 2010, which "no longer required employees to clock
22 out before initiating the store close procedure." *Id.* at 3.

23 But even when so limited, Troester's claim based on the store close procedure
24 still fails, because the time at issue clearly was *de minimis*. Troester concedes that this
25 task was extremely brief, lasting no more than a minute or two. He also effectively
26 concedes that Starbucks time-keeping system could not feasibly capture these moments,
27 arguing that the system "*required*" that he clock out first. Courts consistently hold that
28 the *de minimis* defense bars wage claims in like circumstances.

Troester lacks any convincing argument in response. He contends that the *de minimis* doctrine does not apply to California law claims, ignoring substantial authority to the contrary while supplying no support of his own. He exaggerates the amount of time at issue without actually disputing Starbucks facts. He contradicts himself by arguing that Starbucks had the ability to record this time, while holding firm to his claim that the system in *his* store could not do so. And he tries to distract from his own damning circumstances by arguing about the distinct experiences of *other* employees from *different* stores. None of these arguments is factually or legally supportable. They simply cannot change the conclusion that the brief moments spent running the store close process were *de minimis* as a matter of law. As a result, Troester's wage claims—and the derivative claims based thereon—must be dismissed in their entirety.¹

Finally, two of Troester's derivative claims—for failure to provide accurate pay statements and failure to timely pay final wages—should be dismissed regardless of the disposition of the underlying wage claims. Thus, Troester complains that his paystubs were inaccurate, but he did not file suit in time to recover statutory penalties. His claim for penalties based on late payment of final wages fares no better, because those penalties are not available when an employer asserts a “good faith defense” that no wages are due. Starbucks certainly has done so here. Therefore, even if Troester's wage claims could survive summary judgment, these derivative claims still would fail as a matter of law.

II. ARGUMENT

A. Troester's Claims For Unpaid Wages Fail As A Matter Of Law.

1. Any Unpaid Time Was *De Minimis*.

Troester argues that the *de minimis* doctrine does not apply to claims under the California Labor Code and that, even if it did, the time he spent running the store close computer program does not qualify. He is wrong on both points. Further, he does not

¹ Troester acknowledges that his claim for injunctive relief must be dismissed. Opp. at 2 n.1.

1 dispute, and therefore concedes, that the *de minimis* defense bars his claims based on
2 any other alleged “work.”

3 a) This Defense Applies To California Law Claims.

4 Troester principally contends that the *de minimis* doctrine is a creature of federal
5 law and therefore does not apply to his state law claims. Opp. at 10-13. This position is
6 unsupportable. Courts routinely apply the *de minimis* defense to California law claims.
7 *See Cervantez v. Celestica Corp.*, 618 F. Supp. 2d 1208, 1217 (C.D. Cal. 2009)
8 (rejecting argument that “the *de minimis* [doctrine] relates only to the FLSA, not
9 California law”); *see also Rutti v. Lojack Corp.*, 596 F.3d 1046, 1057-58 (9th Cir. 2010);
10 *Waine-Golston v. Time Warner Entm’t-Advance/New House P’ship*, No. 11cv1057-
11 GPH(RRB), 2013 WL 1285535, at *6 (S.D. Cal. Mar. 27, 2013); *Green v. Lawrence*
12 *Serv. Co.*, No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, at *7 (C.D. Cal.
13 July 23, 2013); *Gillings v. Time Warner Cable LLC*, No. CV 10-5565-AG(RNBx), 2012
14 WL 1656937, at *4-5 (C.D. Cal. Mar. 26, 2012); *Rojas v. Marko Zaninovich, Inc.*, No.
15 1:09-CV-00705 AWI JLT, 2012 WL 439398, at *21-22 (E.D. Cal. Feb. 9, 2012);
16 *Alvarado v. Costco Wholesale Corp.*, No. 06-04015, 2008 WL 2477393 at *4 (N.D. Cal.
17 June 18, 2008). And, as Troester notes, even the state agency charged with enforcing
18 the Labor Code recognizes the vitality of the *de minimis* doctrine under California law.
19 *See DLSE Enforcement Policies & Interpretations Manual* § 47.2.1, *available at*
20 http://www.dir.ca.gov/dlse/dlsemanual/dlse_enfcmanual.pdf; DLSE Op. Letter
21 1988.05.16 at 2; DLSE Op. Letter 1994.02.03-3 at 4.

22 Troester offers no authority to the contrary. He cites *Rutti*, but that case applied
23 the doctrine equally to the plaintiff’s California and FLSA claims in granting summary
24 judgment in favor of the employer. 596 F.3d at 1057-58. Moreover, without saying so,
25 Troester cites only the *dissent*, which did not even discuss the *de minimis* defense at all,
26 but rather opines that time spent commuting to job sites is not compensable under
27 California law. *See id.* at 1065 (Callahan, J., dissenting).
28

1 Troester's reliance on *Morillion v. Royal Packing Co.* is equally misplaced. That
 2 case merely interprets the definition of "hours worked" under California law, without
 3 considering what employers must do about insignificant periods of time that are difficult
 4 to record. *See Morillion*, 22 Cal. 4th 575, 581-88 (2000); *see also Lindow v. United*
 5 *States*, 738 F.2d 1057, 1062 (9th Cir. 1984) (*de minimis* doctrine applies to "otherwise
 6 compensable time"). Courts that evaluate the *de minimis* defense have no trouble
 7 making this distinction. *See Cervantez*, 618 F. Supp. 2d at 1218-19 (discussing
 8 *Morillion* and entertaining *de minimis* defense to Labor Code claims); *Green*, 2013 WL
 9 3907506, at *7 (same, granting summary judgment to employer).

10 Troester's argument that "advances in modern technology" have vitiated the *de*
 11 *minimis* defense also flies in the face of recent case law. In the present day, courts do
 12 not hesitate to grant summary judgment for employers who properly invoke the defense.
 13 *See, e.g., Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525, 532-33 (9th Cir. 2013);
 14 *Espinoza v. County of Fresno*, 290 F.R.D. 494, 506-07 (E.D. Cal. 2013). Troester's
 15 distinction between "quintessential punch clock[s]" and today's "sophisticated time-
 16 keeping systems" is of no help, because the *de minimis* doctrine is particularly
 17 applicable where a timekeeping system requires a few brief steps before clocking in or
 18 after clocking out. As long as the time is minimal, these timekeeping systems
 19 "achieve[] an effective balance between the employers' dual concerns of accurate pay
 20 and administrative efficiency." *Gillings*, 2012 WL 1656937, at *5 (six minutes spent
 21 logging onto computer to access timekeeping software *de minimis*).

22 In short, the *de minimis* doctrine continues to apply with full force to claims such
 23 as Troester's. Troester has cited no authority suggesting otherwise.

24 b) Troester Concedes That Any Alleged "Work" Time Following
 25 The Store Close Process Was *De Minimis*.

26 At deposition, Troester testified that, after completing the store close process on
 27 closing shifts, he set the alarm, walked to the door, locked the door, walked co-workers
 28 to their cars (UF Nos. 15, 23-27) and, on rare occasions, performed brief tasks outside

1 the store, such as bringing in patio furniture, letting co-workers inside, or waiting with
2 co-workers for their rides (UF Nos. 29-31). Starbucks challenged Troester's claims
3 based on each of these tasks.

4 Thus, in its motion, Starbucks explained that *all* of this alleged work was *de*
5 *minimis*, even assuming that it otherwise was compensable. First, Starbucks showed
6 that all of this time generally totaled less than two minutes, so the time at issue is not
7 significant. Mot. at 7-8; UF Nos. 23-27. Troester does not contend otherwise. Second,
8 Starbucks showed that Troester needed to exit the store immediately after setting the
9 alarm to avoid triggering it, so all of these tasks necessarily occurred after clocking out
10 and thus were administratively difficult to record. Mot. at 8-9. Troester does not
11 dispute this point either, choosing instead to argue only that the time spent on the store
12 close procedure could have been captured. Finally, Starbucks showed that, because
13 these two factors unquestionably favor the *de minimis* defense, the defense should be
14 applied regardless of how frequently these "other" tasks occurred. *Id.* at 9. Once again,
15 Troester offered no response.

16 In short, beyond arguing that the *de minimis* defense cannot apply at all—an
17 argument that clearly fails—Troester does not dispute that the defense precludes his
18 claims based on any alleged "work" performed after completing the store close process.
19 By failing to offer any argument in response to Starbucks showing, he conceded this
20 point. *See Silva v. U.S. Bancorp*, No. 5:10-cv-01854-JHN-PJWx, 2011 WL 7096576, at
21 *3 (C.D. Cal. Oct. 6, 2011) (arguments not addressed in opposition are conceded). At a
22 minimum, therefore, Starbucks is entitled to summary adjudication of Troester's claims
23 based on any allegedly unpaid work performed after completing the store close
24 procedure. *See First Nat'l Ins. Co. v. F.D.I.C.*, 977 F. Supp. 1051, 1055 (S.D. Cal. 1997)
25 (court may grant summary adjudication as to parts of a claim or individual issues, even
26 if doing so will not resolve the entire cause of action).

c) The Time Spent On The Store Close Process Was *De Minimis*.

With no argument against the *de minimis* doctrine as applied to any other tasks, Troester focuses exclusively on the store close process and, more specifically, the process before October 2010, when the computer system allegedly “required” him to clock out first. *See* Opp. at 2-3, 13-18. But Starbucks showed that this time was *de minimis* as well, and Troester offers no compelling response.

First, Starbucks showed that the time allegedly spent performing this task—the time between clocking out and setting the alarm (UF No. 15)—lasted one minute on average (UF Nos. 19-21), far less than the time courts routinely hold is *de minimis*. Troester does not dispute these facts or address the cases Starbucks cited. Instead, he offers his own, deeply-flawed analysis to argue that, in fact, the process lasted 2 minutes, 50 seconds on average.² This distinction is irrelevant, because 2 minutes, 50 seconds is not significant for purposes of the *de minimis* doctrine, even if performed every day. *See Gillings*, 2012 WL 1656937, at *5 (six minutes per day spent logging into computer programs before clocking in *de minimis*); *Busk*, 713 F.3d at 532-33 (five to ten minutes per day *de minimis*). Troester cites no authority suggesting otherwise.

Troester next argues that this amount of time is significant in the aggregate, because it amounts to more than 12 hours over a period of nearly two years. Opp. at 17. While this estimate is grossly inflated, it is still only 8 minutes per week—well within the *de minimis* range. *See Lindow*, 738 F.2d at 1062 (collecting cases finding 10 minute per day *de minimis*); *accord Farris v. County of Riverside*, 667 F. Supp. 2d 1151, 1166 (C.D. Cal. 2009) (10 minutes per day); *Abbe v. City of San Diego*, No. 05cv1629 DMS (JMA), 2007 WL 4146696, at *7 (S.D. Cal. Nov. 9, 2007) (same). The 1953 case Troester cites, *Addison v. Huron Stevedoring Corp.*, is inapposite because a dollar per

² Troester’s estimate is based on a number of glaring mistakes, including obvious data entry errors. *See generally* Supp. Slowik Decl. ¶¶ 3-11. In the entry for November 21, 2009, for example, Troester claims two hours of off-the-clock work based on a clock out time of 10:38 p.m., and an alarm time of 12:38 a.m. *See* Setareh Decl., Ex. AA. But 12:38 a.m. was the alarm time for the previous day—the correct time was 10:39 p.m., or one minute after Troester clocked out. *See* Long Decl., Ex. I.

1 week back then equaled more than an hour of work at the minimum wage. *See* 204 F.2d
 2 88, 95 (2d Cir. 1953); 29 U.S.C. § 206(a)(1) (1952); U.S. Dep’t of Labor, History of
 3 Federal Minimum Wage Rates, *available at* <http://www.dol.gov/whd/minwage/chart.htm>.

4 In arguing that one minute per closing shift is not *de minimis*, Troester next tries
 5 to bootstrap the claims of absent class members, speculating that Starbucks underpaid
 6 its California employees by more than \$500,000 per year. Opp. at 18 n.8. Even if this
 7 figure were not an improper extrapolation from an already inflated estimate, it would
 8 have no relevance. Thus, even in class actions, courts in this Circuit uniformly consider
 9 only the named plaintiff’s time in deciding whether the *de minimis* defense bars his or
 10 her claim. *See Busk*, 713 F.3d at 532-33; *Gillings*, 2012 WL 1656937, at *4-5; *Waine-*
 11 *Golston*, 2013 WL 1285535, at *6; *Cervantez*, 618 F. Supp. 2d at 1217; *Green*, 2013 WL
 12 3907506, at *7; *see also Espinoza*, 490 F.R.D. at 507 (decertifying collective action
 13 because *de minimis* defense raised individualized issues, where “different deputies spent
 14 different amounts of time [maintaining] their uniforms”). This Court should do the
 15 same.³

16 No matter how Troester tries to frame the alleged unpaid time still at issue, he
 17 cannot (and does not) dispute that it amounts to a minute or two per closing shift.
 18 Courts consistently hold that such fleeting moments are insignificant for purposes of the
 19 *de minimis* doctrine.

20 Second, Starbucks showed that the time Troester allegedly spent off-the-clock
 21 performing the store close process was administratively difficult to record because,
 22 under his theory, the system *required* him to clock out first. Mot. at 8. In opposition,
 23 Troester continues to allege that his store’s “computer system *required* that Troester
 24 clock out before initiating the close store procedure” until October 2010. Opp. at 2; *see*
 25

26
 27 ³ Troester cites *Reich v. Monfort, Inc.*, 144 F.3d 1329 (10th Cir. 1998), an action by the
 28 Secretary of Labor, to suggest that the Court should aggregate the claims of the putative class in
 deciding his individual claim. To the extent that *Reich* suggests this approach, it is contrary to Ninth
 Circuit law.

1 *also id.* at 3 (arguing that, starting in October 2010, his store implemented a new system
 2 that “no longer *required* employees to clock out before initiating the store close
 3 procedure”) (emphasis added); UF No. 16 (Troester contends that the computer system
 4 at his store required him to clock out before initiating the close store procedure). Where
 5 an electronic timekeeping system cannot capture a few brief moments before clocking
 6 in or after clocking out, the *de minimis* doctrine is properly invoked. *See Gillings*, 2012
 7 WL 1656937, at *5; *Waine-Golston*, 2013 WL 1285535, at *6.

8 Unable to defend his original theory, Troester tries to adopt a new one. Thus, he
 9 now argues that perhaps his store’s system *could* record the time he spent on the close
 10 store procedure, but his managers simply trained him not to record it—apparently out of
 11 a sinister desire to avoid paying him for one additional minute. *See Opp.* at 15 (“[O]ne
 12 may reasonably infer that Starbucks arbitrarily failed to count time as hours worked that
 13 it has always had the ability to record by training its employees not to capture it”). To
 14 support this new theory, Troester cites testimony from a Starbucks witness explaining
 15 that the STAR system was designed to allow employees to clock out *after* running the
 16 close store procedure. *See ASUF No. 24.* But this testimony sheds no light on whether
 17 the system *at Troester’s store* functioned as designed, and Troester maintains that it did
 18 not. *See UF No. 16* (undisputed). Because Troester’s new theory contradicts his
 19 original theory, it should be ignored. *See Matthews v. Xerox Corp.*, 319 F. Supp. 2d
 20 1166, 1172 (S.D. Cal. 2004) (rejecting plaintiff’s “attempt[] to change the fundamental
 21 theory upon which his . . . Complaint relies to avoid summary judgment”).

22 Troester next argues that Starbucks could have trained its employees to write the
 23 time spent on this task in the punch communication log, but instead, it trained them to
 24 use the log only for “missed punches.” *Opp.* at 15; *see also ASUF No. 8.* This
 25 argument is factually insupportable and irrelevant in any event. The record evidence
 26 establishes that Troester understood he could use the log to record time spent working
 27 after clocking out, and that, in fact, he did so. *See UF No. 40.* Troester does not dispute
 28 this fact. But regardless, his argument proves too much. An employer always has the

1 ability to ask an employee to write down time allegedly worked off the clock. If this
 2 fact rendered it “administratively feasible” to record the allegedly unpaid time, the *de*
 3 *minimis* defense would never apply. The Court may not construe the defense in a way
 4 that would render it obsolete. *See Sundstrom v. McDonnell Douglas Corp.*, 816 F. Supp.
 5 577, 584 (N.D. Cal. 1992) (court may not construe common law defense in a way that
 6 “would entirely vitiate the . . . defense”).

7 Troester is similarly mistaken in arguing that *Gillings* and *Waine-Golston*
 8 incorrectly considered the “administrative difficulty” of recording the time at issue,
 9 rather than whether the time was “ascertainable.” The question is not whether it was
 10 possible to ascertain the allegedly unpaid time, but rather whether the employer could
 11 have recorded it without undue “administrative difficulty.” *See Lindow*, 738 F.2d at
 12 1062 (“The *de minimis* rule is concerned with the practical administrative difficulty of
 13 recording small amounts of time for payroll purposes.”). Troester’s apparent suggestion
 14 that Starbucks should have undertaken the burdensome task of obtaining alarm records
 15 from its vendor and then manually comparing them to time records—as it did here, in a
 16 litigation posture, for only one employee—cannot be squared with the law, which
 17 recognizes the need for an “effective balance between the employer’s dual concerns of
 18 accurate pay and administrative efficiency.” *Gillings*, 2012 WL 1656937, at *5.

19 Nor does *Sandifer v. U.S. Steel Corp.* suggest that “ascertainable” time must be
 20 paid regardless of administrative difficulty. *Opp.* at 16. *Sandifer* simply did not disturb
 21 the *Lindow* test, and in fact, is completely inapposite. The issue there was whether time
 22 spent donning protective gear fell under the provision of the FLSA regarding “changing
 23 clothes.” *See Sandifer*, 134 S. Ct. 870, 876-79 (2014). The Court discussed the *de*
 24 *minimis* doctrine only to opine that the doctrine probably should not be invoked in the
 25 context of FLSA “donning and doffing,” because those claims are separately addressed
 26 by a different federal statute, 29 U.S.C. § 203(o). *Id.* at 880.

27 Third, Starbucks showed that courts routinely apply the *de minimis* doctrine
 28 where, as here, the first two *Lindow* factors are satisfied, even if the alleged unpaid time

occurs every day. *See* Motion at 9 (collecting cases). Troester ignores this authority in noting that he “regularly” uploaded data to Starbucks headquarters after clocking out. Opp. at 18. He does not contend that this fact precludes application of the *de minimis* defense where, as here, the time at issue is extremely brief and difficult to capture.

In short, Starbucks established that the *de minimis* doctrine bars Troester’s claims for unpaid wages, and Troester has no compelling argument to the contrary. Therefore, Starbucks is entitled to judgment on these claims.

2. Most Of The Tasks Troester Allegedly Performed After Leaving The Store Are Not Compensable In Any Event.

Starbucks demonstrated that, regardless of whether they were *de minimis*, most of the tasks Troester allegedly performed after leaving the store are not compensable, either because Troester performed them on his own time and of his own volition or because Starbucks had no reason to know about them. Troester does not meaningfully dispute these points. Rather, he contends that these defenses do not apply to his claims based on running the store close program. But Starbucks did not suggest otherwise.

a) Letting Co-Workers Back In The Store And Waiting With Co-Workers For Rides Is Not Compensable “Work.”

Troester attempts to distract attention from Starbucks arguments about compensable work by contending that the tasks of running the store close process and walking co-workers to their cars are compensable. Starbucks did not argue otherwise in its motion.⁴ Rather, Starbucks argued that two *different* alleged tasks—letting co-workers back in the store and waiting with co-workers for their rides—were not compensable activities. Troester did not respond to this argument at all.

Indeed, given his own testimony, he could not meaningfully dispute these points if he had tried. Troester concedes that nobody at Starbucks ever instructed him to let co-

⁴ Starbucks disputes that it required Troester to walk his co-workers to their cars, but it does not seek summary judgment on this basis.

workers back in the store after locking up or to wait with co-workers for their rides after closing shifts. *See* UF No. 33 (“Q: Did anybody at Starbucks ever instruct you to wait with an employee who was being picked up? A: I can’t recall a specific time of that[.]”); *see also* UF No. 34. Because Troester chose to engage in these activities on his own time, with no prompting from Starbucks at all, they are not compensable “work.” *See, e.g., Overton v. Walt Disney Co.*, 136 Cal. App. 4th 263, 271 (2006); Mot. at 10.

Troester’s stray comment that Starbucks “written policies” required him to wait with his co-workers cannot save his claim. *See* Opp. at 7; UF Nos. 33, 34. Troester identifies no writing of any kind that mentions waiting with co-workers for rides. The training document he cites lists closing shift responsibilities, not one of which requires him to “wait outside the store until everyone is picked up,” or anything to that effect. *See* Setareh Decl., Ex. T. Troester may not avoid summary judgment by misstating the record.

b) Troester Is Not Entitled To Pay For Tasks Unknown To Starbucks.

Finally, as Starbucks established, it does not owe Troester any wages for time he spent on activities entirely unknown to Starbucks and for which he chose not to seek payment. Troester again confuses Starbucks position by arguing that the Company had knowledge that he was running the store close process after clocking out. But again, Starbucks did not contend otherwise. Rather, it showed that it had no knowledge of Troester performing *other* alleged tasks, namely, retrieving patio furniture, waiting with co-workers for their rides, and letting co-workers back into the store. Mot. at 11-13. Troester does not dispute that Starbucks had no reason to know about *these* tasks.

Troester’s attempt to distinguish *White v. Starbucks Corp.*, 497 F. Supp. 2d 1080 (N.D. Cal. 2007), and *Koike v. Starbucks Corp.*, No. 06-3215, 2008 WL 7796650 (N.D. Cal. June 20, 2008), also rests on his misunderstanding of Starbucks argument. He notes that, in those cases, the plaintiffs “sought to recover wages for off-the-clock work

1 that was . . . unknown to everyone but the individual employee who was performing it.”
2 Opp. at 8. But the same is true here—Starbucks had no knowledge of the time Troester
3 spent retrieving patio furniture, waiting with co-workers for their rides, or letting co-
4 workers back into the store, because Troester ignored Starbucks procedures for
5 manually recording that time, and instead submitted time records that he apparently
6 believed to be inaccurate. Like the plaintiffs in *White* and *Koike*, therefore, Troester is
7 not owed any wages for those activities.

8 For this reason as well, Starbucks is entitled to summary judgment on Troester’s
9 claims to the extent that they are based on these particular alleged activities.

10 **B. Troester’s Wage Statement Claim Fails As A Matter Of Law.**

11 Troester confirms that his wage statement claim is derivative of his claims for
12 unpaid wages. See Opp. at 20 (“Because of its alleged failures to pay for all time
13 worked, Starbucks failed to provide Plaintiff with accurate wage statements.”).
14 Therefore, since those underlying claims fail, so too does the wage statement claim.

15 But to the extent this claim seeks statutory penalties, it is time-barred in any
16 event. Troester does not dispute this point. Mot. at 14. Rather, he argues that the claim
17 survives because he seeks “actual damages,” so a three-year limitations period applies.
18 Opp. at 19-20. Starbucks disputes that Troester has suffered any loss that would entitle
19 him to “actual damages,” but that issue is beyond the scope of this motion. Since the
20 parties agree that Troester may not seek statutory penalties, his claim for penalties must
21 be dismissed. See *First National*, 977 F. Supp. at 1055.

22 **C. Troester’s Late Final Pay Claim Fails As A Matter Of Law.**

23 Troester confirms that his final pay claim is derivative of his underlying wage
24 claims. See Opp. at 23 (“[B]ecause Starbucks did not pay Plaintiff for the time at issue
25 before he was discharged, . . . Starbucks willfully failed to timely pay him earned wages
26 in violation of California Labor Code section 201”). If his wage claims fail, therefore,
27 so does his claim for final pay penalties.
28

1 But, as Starbucks demonstrated, this claim fails regardless. Troester could not
 2 possibly prove that Starbucks “willfully” failed to pay his final wages, as he must,
 3 because the Company has a “good faith defense” to his wage claims, at the very least.
 4 See Cal. Code Regs., tit. 8, § 13520(a); *see also* Motion at 15-16 (collecting cases).
 5 Troester acknowledges that such defenses preclude recovery of final pay penalties,
 6 “even if unsuccessful.” Opp. at 23. Starbucks defenses here clearly qualify. For
 7 example, given the substantial authority applying the *de minimis* defense to California
 8 law claims, including in cases involving much more allegedly unpaid time than is at
 9 issue here, Starbucks *de minimis* defense is certainly not unreasonable. *See supra* at 3-
 10 8. This fact, alone, is sufficient to defeat a claim for final pay penalties. *See Alonzo v.*
 11 *Maximus, Inc.*, 832 F. Supp. 2d 1122, 1133 (C.D. Cal. 2011) (no section 203 penalties
 12 because, “[t]hough Defendant’s arguments did not ultimately carry the day under the
 13 law as found by this Court,” they “were not unreasonable[]”). Indeed, proof positive
 14 that Starbucks has presented a reasonable defense is the fact that Troester’s response
 15 hinges on his strategy of backing away from his original theory—that the computer
 16 system *required* him to clock out first.

17 Finally, Troester’s speculation that Starbucks might be asserting its defenses in
 18 “bad faith” is totally baseless and cannot defeat summary judgment. “Bad faith”
 19 requires intentional misconduct. Even a “cavalier approach to fulfilling . . . statutory
 20 obligations” that amounts to “gross negligence or recklessness” does not rise to the level
 21 of “bad faith.” *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).
 22 Further, to survive summary judgment, the plaintiff must be able to present *evidence* of
 23 bad faith. *See Worman v. MetLife Grp., Inc.* No. CIV. S-06-2870, 2008 WL 223721, at
 24 *6 (E.D. Cal. Jan. 28, 2008). Such evidence will typically show that the employer’s
 25 legal obligation was obvious and known to it and that the employer simply ignored it.
 26 *See Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 55 (2013) (evidence
 27 showed that employer was aware of obligation to pay piece-rate workers for
 28 unproductive time but failed to do so in violation of its own policies).

Troester has pointed to no evidence that even hints of “bad faith.” He offers no explanation for why Starbucks would scheme to deprive him of one minute of pay on closing shifts, or roughly 13 cents. Citing declarations from five employees, he boldly claims that “widespread evidence” shows that Starbucks trained its employees to clock out before running the store close process. *See* Opp. at 24; ASUF No. 19. But the statements of five employees are not “widespread evidence” of anything. *See* ASUF No. 10. The record establishes that, in fact, Starbucks policy was that employees should clock out *after* running the store close process. *See* UF Nos. 53-54. The fact that a few individuals report an experience contrary to the Company’s policies cannot support a claim that Starbucks acted in bad faith with respect to Troester. His claims of bad faith are pure speculation and should not distract from the clear conclusion that Starbucks, at a minimum, has presented a good faith defense to liability here.

In short, at the very least, Starbucks has presented good faith defenses to Troester’s claims for unpaid wages. These defenses find ample support in both the law and the factual record. Therefore, regardless of whether Troester’s underlying wage claims survive this motion, his claim for final pay penalties must be dismissed.

D. Troester’s Unfair Competition Claim Fails As A Matter Of Law.

Troester does not dispute, and therefore concedes, that his unfair competition claim is derivative of the underlying off-the-clock claims. *See* Opp. at 24. Therefore, if the underlying wage claims fail, this claim must be dismissed as well.

III. CONCLUSION

For all the foregoing reasons, Starbucks respectfully requests that its motion for summary judgment be granted.

Dated: February 24, 2014

AKIN GUMP STRAUSS HAUER & FELD LLP

By /s/ Gregory W. Knopp
 Gregory W. Knopp
 Attorneys for Defendant
 Starbucks Corporation